

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

RSA.No. 9 of 2005(A)

AS.1/1998 of DISTRICT COURT, MANJERI
OS.368/1995 of MUNSIF COURT, MANJERI
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APPELLANTS/DEFENDANTS 2 TO 4:

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1. KIZHAKKE PARAMBAN UNNIMOYI,
S/O. MUHAMMED, R/O. PULIYAKKODE AMSOM
AND DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.
 2. KIZHAKKE PARAMBAN SULAIMAN,
S/O. MUHAMMED, R/O. PULIYAKKODE AMSOM AND
DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.
 3. KIZHAKKE PARAMBAN AHAMMEDKUTTY HAJI,
S/O. KUNHALI, R/O. PULIYAKKODE AMSOM AND
DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: PLAINTIFF:

KIZHAKKE PARAMBAN MUHAMMED,
S/O. MOOTHAKUTTY, R/O.PULIYAKKODE AMSOM AND
DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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R.S.A.No. 9 OF 2005-A

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Dated this the 23rd day of January, 2007.

JUDGMENT

Defendants 2 to 4 in a suit for prohibitory injunction are the appellants. They and the first defendant Panchayat were sued by the plaintiff on the apprehension that there is an attempt to trespass into the property belonging to the plaintiff for widening an existing pathway, thereby reducing the southern boundary of the plaint A schedule properties. The alleged cause of action was found by the courts below. However, in view of a technical objection raised by the Panchayat, the decree for prohibitory injunction was passed only against the appealing defendants. That decree of the trial court has been confirmed by the lower appellate court.

2. There is no dispute between the plaintiff and the appealing defendants as regards any boundary. They are also not immediate neighbours. The appealing defendants also do not assert any right over the plaint A schedule properties. Obviously, therefore, their impleadment in the suit and the

decree against them is on the basis of an apprehension that they, as members of the public, are likely to involve in a wrongful act of unauthorisedly widening the road by encroaching into some portion of the plaintiff A schedule properties. This apprehension of the plaintiff is sufficient cause of action to sustain a civil suit. That apprehension has been found to be bona fide and the cause of action has been upheld by the courts below concurrently. So much so, I do not find any ground to hold that the appealing defendants will be aggrieved by the decree, even if it stands against them.

3. The appreciation of evidence cannot be held to be faulty. It cannot also be held that the decree against defendants 2 to 4, independent of the first defendant, would not stand. There is no error of law in the decisions of the courts below. As a result, no substantial question of law arises for decision in this second appeal.

In the result, this second appeal fails and is dismissed in limine.

Sha/-

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**